

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Amanda Harouche	Team: Squad #16	CCRB Case #: 201407942	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 07/30/2014 5:46 AM	Location of Incident: 150 West 4th Street	Precinct: 06	18 Mo. SOL 1/30/2016	EO SOL 1/30/2016	
Date/Time CV Reported Wed, 07/30/2014 7:30 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/05/2014 10:45 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Gustavo Montesdeoca	28875	946022	006 PCT
2. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joseph Vincent	23708	946375	006 PCT
2. POM Robert Dussel	25510	950363	111 PCT
3. POM Kenton Grant	05639	949053	006 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers used physical force against § 87(2)(b)	
B. POM Gustavo Montesdeoca	Force: PO Gustavo Montes de Oca used physical force against § 87(2)(b)	

Case Summary

On July 29, 2014, at an unknown time, § 87(2)(b) tried to be admitted to a detoxification program in the Bronx but was rejected since the location was full. § 87(2)(b) then traveled from the Bronx to the Washington Square Diner located at 150 West 4th Street in Manhattan to get something to eat. § 87(2)(b) arrived at the diner around 4:30 a.m. on July 30, 2014. § 87(2)(b) became involved in an altercation with a woman and two brothers at the Washington Square Diner. § 87(2)(b) told the two brothers that he was a police officer. The police were called over to the diner and PO Gustavo Montes de Oca, PO Joseph Vincent, PO Kenton Grant and PO Robert Dussel of the 6th Precinct responded to the diner. § 87(2)(b) was arrested for impersonating a police officer. During his arrest, § 87(2)(b) fell to the floor. On the floor, officers allegedly kicked § 87(2)(b) in the ribs, legs and left arm, stepped on his ankles, and punched him in the ribs (**Allegation A**). When § 87(2)(b) looked up, PO Montes de Oca punched § 87(2)(b) in the left eye (**Allegation B**). Officers then allegedly dragged him across the diner (**within Allegation A**). § 87(2)(b) was then placed in a police car and transported to the 6th Precinct stationhouse.

§ 87(2)(b) was arrested and charged as a result of this incident. He pled guilty to disorderly conduct and was sentenced to imprisonment, time served.

Mediation, Notice of Claim, and Criminal Histories

This case was not eligible for mediation. As of April 3, 2015, no Notice of Claim has been filed in regards to this incident (encl. 11a). § 87(2)(b) § 87(2)(c)

§ 87(2)(b)

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Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (encl. d).
- PO Montes de Oca has been a member of the service for seven years and there are no substantiated CCRB allegations against him (encl. c).

Potential Issues

Video footage from the diner was unable to be obtained due to the fact that it was erased before § 87(2)(b) was interviewed. § 87(2)(g)

§ 87(2)(b)

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) felt like all of the officers who had arrived at the diner were on top of him when he was on the floor but he could not identify which officers were kicking him, stepping on his ankles, or punching his ribs because he could not see them since his face was facing the ground. He also estimated that three officers dragged him out of the diner but could not say which officers did so. None of the independent witnesses stated that any officers took any

of the aforementioned force actions and therefore could not describe the subject officers. Additionally, none of the officers admitted to taking these actions against § 87(2)(b)

§ 87(2)(g)

- PO Montes de Oca admitted to punching § 87(2)(b) § 87(2)(g)

Investigation Findings and Recommendations

Allegation A – Force: Officers used physical force against § 87(2)(b)

§ 87(2)(b) stated that when he was on the floor with his face facing the ground, he felt kicks in his ribs and legs and his left arm by his forearm. He also felt his ankles being stepped on. He also felt officers punch him in the ribs for about one minute. § 87(2)(b) did not know which officers were doing this. After the officers got both of his arms behind his back, § 87(2)(b) estimated that three officers dragged him across the diner to the door of the diner where they handcuffed him and then walked him out to the police car (encl. 2a-e).

§ 87(2)(b) a patron of the diner who § 87(2)(b) § 87(2)(e), § 87(2)(f) stated that § 87(2)(b) resisted arrest by moving his hands but that he did not see any officer kick or punch § 87(2)(b) nor did he see officers drag § 87(2)(b) (encl. 3a). § 87(2)(b) § 87(2)(b) stated that § 87(2)(b) resisted being handcuffed and he was brought to the floor as a result. While on the ground § 87(2)(b) was kicking and screaming on the floor. The officers placed handcuffs on him while he was on the floor, picked him up from the floor, and walked him out of the diner. § 87(2)(b) § 87(2)(b) did not see officers kick § 87(2)(b) (encl. 3b). § 87(2)(b) did not observe the officers placing § 87(2)(b) in handcuffs (encl. 3c). § 87(2)(b) stated that he saw § 87(2)(b) on the floor resisting arrest by moving his body. He did not see officers punching or kicking § 87(2)(b) (encl. 3d).

PO Montes de Oca stated that he PO Grant and PO Dussel were involved in a struggle with § 87(2)(b) while he was on the floor. They were grabbing § 87(2)(b)'s arms to try to get them behind his back so that they could handcuff him while saying “stop resisting” and “give us your arms.” PO Montes de Oca denied kicking § 87(2)(b) and did not recall seeing any other officer kick § 87(2)(b). PO Montes de Oca did not recall stepping on § 87(2)(b)'s ankles or seeing another officer step on § 87(2)(b)'s ankles. Though PO Montes de Oca admitted to punching § 87(2)(b) in the face (discussed in Allegation B), he denied that he or any other officer punched § 87(2)(b) in his ribs. Once § 87(2)(b) was handcuffed he was stood up and walked out of the diner by PO Montes de Oca and other officers that PO Montes de Oca could not remember (encl. 4a-m).

PO Dussel stated that PO Montes de Oca and PO Vincent were the officers mainly involved in dealing with § 87(2)(b) who was resisting. He did not remember getting physically involved with restraining § 87(2)(b) and he was not sure if PO Grant got physically involved in restraining § 87(2)(b). PO Dussel did not see any officer kick § 87(2)(b) in the ribs, legs or arms and PO Dussel denied kicking § 87(2)(b). PO Dussel did not see an officer punch § 87(2)(b) in the ribs and he denied punching § 87(2)(b) in the ribs. He also stated that § 87(2)(b) was not dragged across the diner (encl. 5a-e).

PO Vincent stated that § 87(2)(b) resisted being placed in handcuffs by moving his arms away from the officers. PO Vincent only remembered him and PO Montes de Oca becoming

physically involved with restraining § 87(2)(b) PO Vincent remembered at least two officers, including himself interacting with § 87(2)(b) when he was on the floor. PO Vincent tried to maintain § 87(2)(b)'s body movements by holding part of § 87(2)(b)'s body down though he did not remember what part he was holding. PO Vincent did not kick § 87(2)(b) and he did not see any other officer kick § 87(2)(b) PO Vincent did not step on § 87(2)(b)'s ankles and he did not see another officer step on § 87(2)(b)'s ankles. PO Vincent did not punch § 87(2)(b) in the ribs and he did not see another officer punch § 87(2)(b) in the ribs. PO Vincent stated that § 87(2)(b) was not dragged in the diner (6a-e).

PO Grant stated that § 87(2)(b) resisted being placed in handcuffs and went to the floor himself. While on the floor PO Grant and PO Dussel were on the floor with him. PO Vincent was holding § 87(2)(b)'s arms and shoulders down and he was not sure where PO Montes de Oca was. PO Grant and PO Dussel held § 87(2)(b)'s legs down by pressing their palms into § 87(2)(b)'s legs while he was on the floor. PO Grant did not kick § 87(2)(b) step on his ankles, or punch him in the ribs and he did not see any other officer do so. Once § 87(2)(b) was handcuffed and calmed down, PO Montes de Oca and PO Vincent then picked § 87(2)(b) up from the floor and walked him out of the diner. § 87(2)(b) was not dragged by any officer (7a-h).

An officer is permitted to use the minimum amount of force necessary to overcome resistance and take a violent or resistant individual into custody NYPD Patrol Guide Procedure 203-11 (encl. a-b).

§ 87(2)(g)
[REDACTED]

Allegation B – Force: PO Gustavo Montes de Oca used physical force against § 87(2)(b)

It is undisputed that PO Montes de Oca punched § 87(2)(b) in the eye.

§ 87(2)(b) denied that he was moving around on the floor, however he did admit to yelling, being told to stop resisting, and having his arms underneath his body. § 87(2)(b) stated that when he was on the floor, he looked up for one second and immediately got punched in the eye which caused his neck to “snap,” his eye to hurt, and his vision to become blurry (encl. 2a-e).

Independent witnesses § 87(2)(b) and § 87(2)(b) all stated that § 87(2)(b) was resisting on the floor though they did not see § 87(2)(b) get punched by PO Montes de Oca (encl. 3a, 3b, 3d). § 87(2)(b) did not see § 87(2)(b) being placed in handcuffs (encl. 3c).

PO Montes de Oca stated that he struck § 87(2)(b) in the face around the right eye area with his right hand. PO Montes de Oca struck § 87(2)(b) when he was on the floor, struggling

with the officers, refusing to give them his hands, and trying to get up off of the floor. PO Montes de Oca struck § 87(2)(b) in order to gain compliance from § 87(2)(b) and for the officers' safety and claimed that the punch was somewhat effective in gaining compliance from § 87(2)(b). After § 87(2)(b) was struck he stopped resisting a little bit and the officers were able to grab one of § 87(2)(b)'s arms and place a handcuff on it (encl. 4a-m).

PO Dussel, PO Vincent and PO Grant all stated that they did not see an officer punch § 87(2)(b) in the eye (encl. 5a-d, 6a-e, and 7a-h).

The IAB referral states that § 87(2)(b) sustained a black eye from the officers on scene while resisting arrest (encl. 1a-b).

§ 87(2)(b)'s medical records show that he was discharged with a cervical collar for midline cervical pain and that he had a black and blue right eye (encl. medical records folder).

An officer is permitted to use the minimum amount of force necessary to overcome resistance and take a violent or resistant individual into custody NYPD Patrol Guide Procedure 203-11 (encl. a-b).

§ 87(2)(g)

[REDACTED]

Pod: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____

	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date